

REMARKS

Claims 23-44 are pending and under consideration. Claims 23, 31, 33, 34, and 41 are independent claims. Claims 1-22 drawn to a non-elected invention have been cancelled without prejudice. Claims 23, 31, 33, 34, and 44 have been amended. Reexamination and reconsideration of the application, as amended, are hereby respectfully requested.

Claim Amendments

Independent Claims 23, 31, 33, 34, and 41 have been amended to correct a minor typographical error in the preamble. The amendments are not narrowing amendments, nor were they made for reasons related to patentability.

Restriction/Election

In the requirement for restriction dated 09/30/2004, the claims of the instant application were divided into two groups:

- Group I (Claims 1-22) drawn to a data processing system performing an automated financial or business method, practice, or task; and
- Group II (Claims 23-44) drawn to a method of data processing comprising generating data base or database structure (e.g. via user interface).

In an election submitted 10/18/2004, Group II (Claims 23-44) was elected for further prosecution, with traverse. In the Office Action of 12/21/2005, the restriction requirement was repeated and made final, based on the assertion that the apparatus as claimed can be used to practice another, materially different process. Applicant acknowledges this to be the case, e.g., the apparatus could include additional programming for practicing another, materially different process.

Accordingly, Claims 1-22 drawn to a data processing system are withdrawn from consideration, and are cancelled without prejudice.

Claim Rejections under 35 USC §103

Claims 23-44 stand rejected under 35 USC §103 as being unpatentable over Sharp (US6263317).

Applicant respectfully submits that Claims 23-44 patentably distinguish over Sharp, for the reasons set forth hereinbelow.

Regarding independent Claims 23, 31, 33, 34, and 41, Sharp does not disclose a supplier database that includes *product inventory* information from multiple participating product suppliers, as recited in Claim 23 at lines 3-11, in Claim 31 at lines 3-12, in Claim 33 at lines 3-10, in Claim 34 at lines 3-10, and in Claim 41 at lines 3-10. The assertion in the Office Action that Sharp discloses this limitation is erroneous. Sharp discloses only that once an order is received, the system sends an order notification to a selected supplier, and then awaits acceptance or rejection of the order by the notified supplier (column 4 lines 12-34). If the supplier database in the system of Sharp included product inventory information, the notification and subsequent acceptance or rejection would be unnecessary; the system would simply automatically direct a supplier to fulfill the order based in part on product inventory information in the supplier database, as recited in Claim 23 (lines 48-52), Claim 31 (lines 37-44), Claim 33 (lines 42-46), Claim 34 (lines 42-46), and Claim 41 (lines 42-46). Since the claim limitation is neither taught nor suggested by Sharp and no other reference has been cited, rejection under 35 USC § 103 is improper (MPEP 2143.03), and Applicant respectfully requests its withdrawal. If the rejection is to be sustained in a subsequent Office Action, Applicant respectfully requests that a specific reference be explicitly cited or that an affidavit under 37 CFR § 1.104(d)(2) be provided (MPEP 2144.03).

Further regarding independent Claims 23, 31, 33, 34, and 41, Sharp does not disclose that orders from multiple purchasers may be received into a multiply-integrated e-commerce system through *multiple* independent entities. This limitation is recited in Claim 23 at lines 23-42, in Claim 31 at lines 13-31, in Claim 33 at lines 17-36, in Claim 34 at lines 17-36, and in Claim 41 at lines 17-36. Sharp only discloses an e-commerce system in which a *single* entity (referred to as the owner of the e-commerce website) may receive orders from multiple customers, and then allocate fulfillment of that order among various “distributors” (which may include the manufacturers, intermediate distributors, or retailers) according to a “conflict resolution protocol”. Nowhere in Sharp is there any showing, teaching, or suggestion that orders placed by multiple purchasers may enter the system via multiple suppliers. Sharp only discloses that the multiple suppliers provide fulfillment of orders placed through the single e-commerce website. Since the claim limitation is neither taught nor suggested by Sharp and no other reference has been cited, rejection under 35 USC § 103 is improper (MPEP 2143.03), and Applicant respectfully requests its withdrawal. If the rejection is to be sustained in a subsequent Office Action, Applicant respectfully requests that a specific reference be

explicitly cited or that an affidavit under 37 CFR § 1.104(d)(2) be provided (MPEP 2144.03).

Regarding Claims 25-30, it is asserted in the Office Action that

Sharp et al fail to disclose that the purchaser has any particular relationship to any other entity associated with the product (i.e., a retailer of the product purchasing the product from another retailer of the product). However, the method of Sharp et al does not preclude that one entity associated with the product could purchase the product from another entity associated with the product, and one of ordinary skill in the art would instantly recognize the suitability of Sharp et al for performing such a step.

First, the relationships recited in the claims are not between the purchaser and another entity, but between the entity receiving an order from the purchaser and the entity fulfilling the order (i.e. delivering ordered items to the purchaser). The methods recited in the claims are not methods for one entity to purchase from another, but are methods for one entity to receive an order from a purchaser and for another entity to fulfill the order.

Claims 25-30, *inter alia*, recite methods in which orders are received and fulfilled utilizing “horizontal” interactions between entities (as defined in the background section of the specification; e.g. retailer-to-retailer, distributor-to-distributor, and so forth). It is precisely these “horizontal” interactions that Applicant respectfully submits are patentably novel and non-obvious. Sharp discloses methods in which one entity fulfills an order received by another entity, but only utilizing “vertical” interactions as defined in the specification. Nowhere does Sharp disclose horizontal interactions between independent retailers or between independent distributors (with one entity fulfilling an order received by the other, and vice versa), nor does Sharp contain any suggestion or motivation to do so.

Furthermore, the fact that “the method of Sharp et al does not preclude that one entity ... could purchase the product from another entity ...” is not a sufficient basis for an obviousness rejection unless the prior art also suggests the desirability of the claimed method. (*In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); MPEP 2143.01). Such a suggestion of desirability has not been demonstrated in the Office Action. Applicant respectfully submits that traditional competition between independent

retailers or between independent distributors would typically preclude, or at least discourage, the types of “horizontal” interactions recited in the claims. A person of ordinary skill in the art would not be motivated to modify the methods disclosed by Sharp to include such non-traditional “horizontal” interactions, absent the teachings of the Applicant’s specification. Further, the stated purpose of the system of Sharp is to restrict which entities may or may not fulfill an order for a particular item based on a “sales channel conflict resolution protocol” (note the title, abstract, description, and claims of Sharp). Modification of the system of Sharp to include the “horizontal” interactions recited in the claims would undermine its intended purpose. As such, Sharp cannot support a *prima facie* obviousness rejection under 35 USC § 103 (MPEP 2143.01); Applicant respectfully requests withdrawal of the rejection. If the rejection is to be sustained in a subsequent Office Action, Applicant respectfully requests that a specific reference be explicitly cited or that an affidavit under 37 CFR § 1.104(d)(2) be provided (MPEP 2144.03).

Regarding Claims 35-37, it is asserted in the Office Action that auctions/bidding and fixed-price sales are considered art-recognized equivalents. Applicant respectfully traverses this assertion. They are not equivalent, given the widely varying and unpredictable prices that may result from bidding versus the predictable price of a fixed-price catalog item. Further, while auctions or bidding may be well known for purchasing items, Applicant is unaware of any use of auctions or bidding to determine which *supplier* is selected to *fulfill* an order placed with another supplier. This limitation is not disclosed in Sharp, and no other reference has been cited. Therefore, rejection under 35 USC § 103 is improper (MPEP 2143.03), and Applicant respectfully requests its withdrawal. If the rejection is to be sustained in a subsequent Office Action, Applicant respectfully requests that a specific reference be explicitly cited or that an affidavit under 37 CFR § 1.104(d)(2) be provided (MPEP 2144.03).

Regarding Claims 38-40, Examiner has asserted that “aggregating orders is a well known, hence obvious, step to perform in any method of electronic ordering”. However, “automatically aggregating *in real time*”, as recited in amended Claim 34, is not taught, suggested, or motivated by Sharp, nor has any teaching, suggestion, or motivation been demonstrated in the prior art. Aggregation of orders placed with multiple independent product suppliers (Claims 38-40), and aggregation of onsite and online orders (Claim 36), are new and useful results achieved by the claimed methods that are not shown, taught, suggested, or motivated by Sharp, nor has any such teaching, suggestion, or motivation been demonstrated elsewhere in the prior art. Such

new and useful results are patentable. *In re Wright*, 122 USPQ 522. Applicant respectfully submits that rejection of Claims 38-40 under 35 USC §103 is improper, and respectfully requests withdrawal of the rejection. If the rejection is to be sustained in a subsequent Office Action, Applicant respectfully requests that a specific reference be explicitly cited or that an affidavit under 37 CFR § 1.104(d)(2) be provided (MPEP 2144.03).

As noted hereinabove, at several points in the Office Action it has been asserted that various steps not disclosed by Sharp are nevertheless well known, and that incorporation of such steps into the method of Sharp would constitute an obvious modification of the method of Sharp. These assertions were made without citing any specific reference, but by merely taking “official notice”, by asserting “art-recognized equivalents”, and so forth. If any rejections are maintained based in part on such an assertion, or if any new rejection is made based in part on a similar new assertion, Applicant respectfully requests that, in accordance with MPEP 2144.03, either a specific reference be explicitly provided or an affidavit be provided in support of the assertion as specified in 37 CFR § 1.104(d)(2). This request was made in the response to the previous Office Action, but included a typographical error and was therefore disregarded. Applicant regrets any confusion this obvious typographical error may have caused.

Conclusion

In view of the above, it is respectfully submitted that Claims 23-44 are in condition for allowance. Allowance of Claims 23-44 at an early date is earnestly solicited.

Respectfully submitted,

/David S Alavi - 40310/

David S. Alavi
2852 Willamette Street
#402
Eugene, OR 97405

Reg. No. 40,310
541-686-9462 voice
800-853-6150 fax
dalavi@northwestpatent.com